

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 20,241
)	
Appeal of)	

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Health Access Eligibility Unit, denying Vermont Health Access Program (VHAP) benefits. The issue is whether the petitioner was eligible for VHAP benefits as an underinsured person.

FINDINGS OF FACT

1. The petitioner is a single woman who first applied for VHAP benefits on March 8, 2006.
2. Petitioner was diagnosed with cancer while working overseas in Costa Rico during 2004. Petitioner left her job and relocated to the United States to obtain treatment. When petitioner returned to the United States, she obtained private medical insurance through Blue Cross/Blue Shield of Vermont effective December 14, 2004. Her initial deductible was \$3,500.
3. At the time petitioner initially applied for VHAP, she was working as an adjunct professor for the University of

Vermont during the spring semester. Her gross salary from UVM was \$475.88 every two weeks or \$1,023 per month. Her countable income during March was \$933 after applying the VHAP earned income disregard. The VHAP limit for a one-person household was and is \$1,232 per month.

4. Petitioner was denied VHAP on or about March 8, 2006. The Department based the denial on information that petitioner's insurance had ended due to nonpayment of the premium and invoked the regulation that petitioner would have a twelve month waiting period because she had lost insurance in the last twelve months without good cause. Petitioner appealed the denial. Petitioner testified that she was informed by a Department employee that she would not qualify for VHAP if she had insurance. However, petitioner kept the insurance but downgraded the coverage because she did not believe she could be without coverage given her medical history but she could not afford maintaining a policy with a \$3,000 deductible.

5. Petitioner next applied for VHAP on June 1, 2006. At that time, petitioner had received her last paycheck of \$475.88 from UVM and two unemployment compensation checks in the amount of \$101 and \$111 for a gross monthly income of \$687.88 for May. Petitioner still had private insurance

through Blue Cross/Blue Shield of Vermont. However, since her last application, she had increased the deductible in order to lower her monthly charges. In May, petitioner paid \$392.11 per month for a policy with a deductible of \$7,500. Starting June, petitioner paid \$257.51 per month for a policy with a \$10,000 deductible. In her application, petitioner noted that she hoped VHAP could start July 1, 2006. Petitioner had maxed out her credit cards paying for her medical costs including health insurance and was in credit counseling.

6. On or about July 7, 2006, the Department denied petitioner's application for VHAP noting that petitioner had health insurance. An appeal of this denial was incorporated into the earlier denial.¹

7. Petitioner testified that she has survived two bouts with cancer. Petitioner did not believe she could drop her private insurance while seeking VHAP coverage due to her medical history and follow-up treatment even though she did not have the means to pay for the private insurance.

ORDER

The Department's decision is reversed.

¹ Petitioner's case was first heard by one hearing officer and then transferred to the other hearing officer for further development and review given the issues raised by this case.

REASONS

The Vermont Health Access Plan (VHAP) was created to “provide health care coverage for uninsured or underinsured low income Vermonsters”. 33 V.S.A. § 1973(b). W.A.M. § 4000.

The state regulation defines uninsured or underinsured as follows:

Individuals meet this requirement if they do not qualify for Medicare and have no other insurance that includes both hospital and physician services, and did not have such insurance within 12 months prior to the month of application, unless they meet one of the following exceptions below.

- (a) Exceptions related to loss of employer-sponsored coverage. . .
- (b) Exceptions related to loss of college or university-sponsored coverage. . .
- (c) Exceptions related to loss of coverage for low-income applicants. . .

W.A.M. § 4001.2

Petitioner finds herself between a rock and a hard place. With her medical history, she cannot take the chance of canceling her insurance to seek VHAP coverage using the rationale in Fair Hearing No. 16,748. On the other hand, keeping her private insurance leads to the Department finding her ineligible because she has insurance. However, petitioner’s insurance is not affordable. Based on

affordability, petitioner raises the issue of whether she should be considered underinsured.

The Department argues that petitioner should not be considered underinsured because she has private health insurance that includes both hospital and physician services. The above regulation appears to define underinsurance as coverage that does not include both hospital and physician services.

The Department's regulation does not comport with the meaning and scope of the VHAP waiver² that had been approved by the Department of Health and Human Services through its Centers for Medicare and Medicaid Services.

The Board first considered whether W.A.M. § 4001.2 met the requirements of federal law in Fair Hearing No. 16,748. In that case, the Board found the regulation conflicted with the VHAP Waiver requirements because the regulation eliminated from eligibility persons who had health insurance during the prior twelve months without considering whether the loss of insurance was voluntary.³

² "Vermont Health Access Plan: A Statewide Medicaid Demonstration Waiver Initiative" (February 23, 1995).

³ The Department is arguing that the Board does not have jurisdiction to hear this issue because the Secretary reversed the Board's decision in Fair Hearing No. 16,748 pursuant to the Secretary's authority under 3 V.S.A. § 3091(h). The Department made the same argument during the Board's deliberations of Fair Hearing No. 16,748 based on an earlier

The Department operates the VHAP program through a waiver from the Department of Health and Human Services. 42 U.S.C. § 1315. The Secretary of Health and Human Services is authorized to waive the Department's compliance with federal Medicaid requirements if necessary to carry out a particular project. Unless a provision is specifically waived, the Department is bound by federal law. See *Boulet v. Celluci*, 107 F. Supp.2d 61 (D.Mass. 2000); *Makin v. Hawaii*, 114 F. Supp.2d 1017 (D.Hawaii 1999).

The purpose of the VHAP program is to expand health care coverage to Vermonters with incomes up to 150 percent of the poverty level. In their Waiver, the Department did not ask to be specifically exempted from the Medicaid provisions which allow recipients to have other health insurance. 42 U.S.C. §1396(a)(25). Fair Hearing No. 16,748 does not specifically address this point because the petitioner did not raise it.

If petitioner had applied after losing her private coverage, petitioner could avail herself of the reasoning in Fair Hearing No. 16,748 that she lost private insurance

reversal of the Board in Fair Hearing No. 16,414. However, the Department's reasoning then and now ignores that the Board has a separate and independent function to hear appeals of Department actions. 3 V.S.A. § 3091. Board duties include whether a Department's regulation conflicts with federal or state law. 3 V.S.A. § 3091(d); *Stevens v. Dept. of Social Welfare*, 159 Vt. 408, 416 (1992).

coverage involuntarily because the insurance was not affordable. Petitioner should not now be penalized because she has attempted at great financial hardship to maintain an ever diminishing amount of private insurance; especially, as the Medicaid program does not disqualify persons with private health insurance, and there is no explicit waiver of this requirement in the VHAP Waiver.

The Department also points to the Board's ruling in Fair Hearing No. 17,518 that affirmed the Department's disqualification of a person with other insurance. That case can be distinguished as the person was not seeking to terminate his private insurance, but seeking a supplement to his private coverage. Here, petitioner intends to terminate her private insurance if VHAP is available as her private insurance is not affordable. In a sense, petitioner is seeking a declaratory judgment to avoid the potential of harm if she terminates her private insurance before knowing that she will qualify for VHAP.

Based on the foregoing, the petitioner should be considered underinsured and the Department's decision denying VHAP is reversed.

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